

NOT FOR PUBLICATION

OCT 14 2004

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

SAMUEL GARRETT PIERCE,

Petitioner - Appellant,

v.

GEORGE M. GALAZA,

Respondent - Appellee.

No. 03-16965

D.C. No.

CV-02-00565-WBS/GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, Chief District Judge, Presiding

Submitted October 8, 2004**
San Francisco, California

Before: RYMER, TALLMAN, and BEA, Circuit Judges.

Samuel Garrett Pierce, a California state prisoner, appeals the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition challenging his

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

conviction after a court trial, for assault with a semiautomatic firearm, assault with a firearm, willful discharge of a firearm in a grossly negligent manner likely to cause injury or death, and willful discharge of a firearm at an occupied motor vehicle. We have jurisdiction pursuant to 28 U.S.C. § 1291, we review de novo the district court's denial of Pierce's petition, *Clark v. Murphy*, 331 F.3d 1062, 1067 (9th Cir. 2003), and we affirm.

I

For the reasons stated by the district court, we hold that Pierce was not denied effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 688-90 (1984).

II

We recognize that Pierce has raised uncertified issues in his opening brief, which we construe as a motion to expand the Certificate of Appealability. So considered, we deny the motion. Ninth Cir. R. 22-1(e); *see also Hiivala v. Wood*, 195 F.3d 1098, 1104-05 (9th Cir. 1999) (per curiam).

AFFIRMED.